

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO.2582 OF 1998

Syndicate Bank,
a body corporate constituted under the
Banking Companies (Acquisition and
Transfer of Undertakings Act 1970,
having its Head Office at Manipal in
the State of Karnataka and a Zonal Office at
Maker Tower, E Wing, II floor,
Cuffe Parade, Bombay 400 005
and a Branch Office, amongst others,
at Matunga Bazar, Bombay-400 019.

....Plaintiffs.

Vs.

1. Pal Fuel Injection Service
156 A, Basant Niwas,
LBS Marg, Kurla, Mumbai-400 070.
2. Mr. Prithpal Singh Hanspal,
156A, Basant Niwas, LBS Marg,
Kurla, Mumbai - 400 070.
3. Smt. Joginder Kaur Dharam Singh,
156 A, Basant Niwas,
LBS Marg, Kurla, Mumbai-400 070.
4. Mr. Shamsher Singh Hanspal,
156A, Basant Niwas,
LBS Marg, Kurla, Mumbai- 400070,
5. Mr. Jaspal Singh Hanspal,
156A, Basant Niwas,
LBS Marg, Kurla, Mumbai- 400 070.
6. Rajinder Singh Hanspal,
156A, Basant Niwas,
LBS Marg, Kurla,
Mumbai- 400 070.

..Defendants.

Mr.S.A.Shetty for the Plaintiffs.

**CORAM: A.S. OKA, J.
DATE : JULY 24, 2007**

ORAL JUDGMENT

1. Heard learned counsel appearing for the plaintiffs. He has tendered on record an affidavit in lieu of examination-in-chief of Shri. K.N.Kamat, a Chief Manager of the plaintiffs. The said affidavit is marked "X" for identification and is taken on record. He has also tendered on record a compilation of original documents. The said compilation is marked "Y" (Collectively) and is taken on record.

2. The suit is filed by the plaintiffs for recovery of the amount due and payable by the first defendant under overdraft facility granted to the first defendant in the sum of Rs.50,000/- against hypothecation of the stocks and goods. A reliance has been placed on various documents executed by the first defendant such as a Demand Promissory Note, An agreement of Hypothecation of Goods, Stock in Trade and Moveable property and monies receivable dated 5.6.1984, a Covering letter dated 5.6.1984 and a Letter of authority of the same date authorising the plaintiffs to honour all the cheques, drafts and other documents. According to the case of the plaintiffs, the second defendant alongwith late Dharamsingh are the partners

of the first defendant firm.

4. A reliance has been placed on the Letter of Acknowledgment dated 1st March, 1995 executed by the second defendant by which the second defendant acknowledged his liability as a partner of the first defendant as well as a guarantor of the first defendant.

5. As the first and second defendants did not clear the dues, by Advocate's notice dated 31st December, 1997, the plaintiffs called upon the first and second defendants to repay the amount. As there was no response from the defendants, the present suit has been filed. There is no written statement filed by the defendants.

6. The claim of the plaintiffs in the suit has been duly proved by affidavit of Shri.K.N. Kamat. The original documents on which reliance has been placed by the plaintiffs have been duly proved by the said affidavit of Shri.K.N.Kamat. Thus, the liability of the first and second defendants has been established by the plaintiffs. According to the case of the plaintiffs, the agreed rate of interest between the parties is 20.40% per annum compounded quarterly .

Considering the facts and circumstances of the case, further interest at the rate of 18% per annum deserves to be granted to the plaintiffs.

7. Hence, suit is decreed in terms of prayer clause (a), (b) and (j) subject to modification that further interest payable will be at the rate of 18% per annum from the date of institution of the suit till realization or the payment.

8. The plaintiffs will be entitled to refund of court fees, if any, as per rules.

9. Certified copy is expedited.

(A.S. OKA, J.)